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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Conditional	)	
Temporary Urgency Change Order	)	
for Permits 11315 and 11316	)	ORDER: WR 95-12
(Applications 13370 and 13371)	)	
	)	SOURCE: American River
U.S. BUREAU OF RECLAMATION,	)	
	)	COUNTY: Sacramento
Permittee.	)	

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**ORDER VALIDATING THE ISSUANCE OF  
CONDITIONAL TEMPORARY URGENCY CHANGE ORDER  
ADDING A POINT OF REDIVERSION**

BY THE BOARD:

**1.0 INTRODUCTION**

Folsom Dam and Reservoir are located on the American River near Folsom, California. The U.S. Bureau of Reclamation (Bureau) has water right permits authorizing diversion of American River water to storage and for direct diversion for use. On July 17, 1995, a radial arm for a spillway gate on Folsom Dam broke resulting in an uncontrolled release of water from the reservoir.

On July 18, 1995, the Bureau filed a petition for change pursuant to Water Code Section 1435 et seq. with the State Water Resources Control Board (SWRCB). The petition sought to add a point of rediversion in the Sacramento-San Joaquin Delta to divert water being lost from storage at Folsom Reservoir. On July 19, 1995, Jim Stubchaer, a member of the SWRCB, issued an order approving the petition for temporary urgency change.

Water Code Section 1435(d) requires that within 30 days of the issuance of an order approving a temporary change, the SWRCB must validate the order. On July 21, 1995, the SWRCB prepared a notice and transmitted it to the Bureau for posting.

## 2.0 THE BUREAU'S WATER RIGHTS

Permit 11315 (Application 13370) allows for direct diversion of up to 8,000 cubic feet per second (cfs) and storage of 1,000,000 acre-feet per annum (afa) in Folsom Lake. The water is used for irrigation purposes within the Bureau's service area. Permit 11316 (Application 13371) allows for direct diversion of up to 700 cfs and storage of 300,000 afa in Folsom Lake. The water is used for recreation at Folsom Lake and for municipal, industrial, and domestic purposes within the Bureau's service area.

## 3.0 THE PETITION FOR CHANGE

On July 18, 1995, the Bureau filed, via fax, a petition for temporary urgency change pursuant to Water Code Section 1435 et seq.<sup>1</sup> The petition sought to temporarily add the Clifton Court Forebay Intake of the State Water Project, Harvey O. Banks Pumping Plant (Banks Pumping Plant) to Permits 11315 and 11316 as a point of rediversion for a period of 30 days. The purpose of the proposed change was to allow the rediversion of a portion of the water being released from Folsom Lake.

## 4.0 FINDINGS REQUIRED BY WATER CODE SECTION 1435

Water Code Section 1435(b) provides that prior to issuing a change order, the SWRCB shall make all of the following findings:

- "1. The permittee has an urgent need to make the proposed change;
- "2. The proposed change may be made without injury to any lawful user of water;
- "3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
- "4. The proposed change is in the public interest."

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<sup>1</sup> The original of the petition was received by the SWRCB on July 21, 1995.

The section also requires that findings be made to support any conditions required to assure that a change is in the public interest, may be made without injury to any lawful user of water and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

#### 5.0 THE TEMPORARY URGENCY ORDER

The findings required by Section 1435(b) are made in the July 19, 1995 change order. In addition, the order found that the project is exempt from the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15307.

Having made the foregoing findings, the order approved the temporary change subject to conditions which include the following:

- "1. The SWRCB shall, at a meeting held not later than 30 days following issuance, review and validate the temporary urgency change, including the findings upon which it was issued. Should the SWRCB fail or refuse to validate the temporary change, it shall stand revoked and be of no further force or effect.

\* \* \*

- "4. This order shall be effective beginning on the date of its issuance and shall automatically expire 30 days after the date of its issuance, without further action by the SWRCB.
- "5. Permittee may temporarily redivert water from the Clifton Court Forebay Intake of the State Water Project, Harvey O. Banks Pumping Plant. The point of rediversion is described as follows:  
  
California Coordinates, Zone 3, N 486,035;  
E 1,695,057; within NW¼ of SE¼ of Projected  
Section 20, T1S, R4E, MDB&M.
- "6. Rediversion of water may only be made until two days after the uncontrollable release of water from Folsom Lake ends."

## 6.0 THE NOTICE

Water Code Section 1438 provides, in pertinent part, that:

"(a) The board may issue a temporary change order in advance of the notice required by this section. In all cases, whether or not a temporary change order is issued, the board shall, as soon as practicable after the receipt of a petition, issue and deliver to the permittee or licensee a notice of the change order which includes the information required by the rules of the board.

"(b) Publication or posting of the notice shall be as follows:

\* \* \*

"(2) (A) The permittee or licensee shall post the notice in at least two conspicuous places in the locality of the affected change. Notices shall be posted not later than two days after receipt. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

"(B) The board shall send a copy of the notice by registered mail to each person, who in the judgement of the board, could be adversely affected by the temporary change."

On July 21, 1995, the SWRCB prepared the notice of the July 18, 1995 petition for change and transmitted it to the Bureau. The Bureau was required to post the notice near Folsom Dam and near the Banks Pumping Plant. The letter also requests the Bureau to post the notice on its electronic bulletin board.

In addition to the foregoing, the SWRCB sent the notice by:

(1) registered mail to three persons and (2) ordinary mail to 340 persons, and posted the notice on the SWRCB's electronic bulletin board.

The notice provides that objections to validation of the temporary urgency permit must be filed by 4:00 p.m. on July 31, 1995. A fax number was provided to facilitate the filing of objections. The notice also provides that objections to validation of the order must be based on allegations that there



**ORDER**

NOW, THEREFORE, IT IS ORDERED that the issuance of the July 19, 1995 Temporary Order is validated.

**CERTIFICATION**

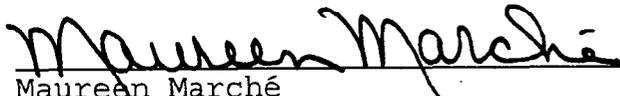
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 17, 1995.

AYE:           John Caffrey  
                  Mary Jane Forster  
                  Marc Del Piero  
                  James M. Stubchaer  
                  John W. Brown

NO:             None

ABSENT:        None

ABSTAIN:       None

  
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Maureen Marché  
Administrative Assistant to the Board